

months with the San Francisco City and County Hospital-Stanford Service, and Stanford-Lane Hospital.

Dr. Clinite was graduated from Stanford Medical School in 1939, interned in the San Francisco City and County Hospital, and spent two and a half years at the county hospital in Tulare before entering the Navy in 1942.

During his 35 months of sea duty he handled general Navy practice and battle casualties. At the time of his release from active duty he was a lieutenant commander.—*Palo Alto Times*, April 11.

Radium Society Meeting Changed.—Dates previously announced for the annual meeting of the American Radium Society are incorrect. The meeting will be held in the Assembly Hall in the San Francisco Health Center on June 29 and 30, Saturday and Sunday.

Sacramento Health Officer Recommendation.—A group of Sacramento physicians are urging the hiring of Dr. Albert F. Zipf as the full-time health officer of both Sacramento City and Sacramento County.

The local doctors are suggesting to city councilmen and City Manager Sherwin that Dr. Zipf, new county health officer and acting city health officer, be given the full-time city post, and that a contract be made with county supervisors so that he can act as county health officer.

This would reverse the present contract between supervisors and the council whereby Dr. Zipf has been temporary city health officer on a six months basis, which will expire June 30.—*Sacramento Union*, April 26.

Press Clippings.—Some news items from the daily press on matters related to medical practice follow:

Vaccination Centers Care For 150,000

City Using Latest Type Technique to Combat Smallpox

Emergency hospitals, clinics, health centers and doctors' offices continued to be crowded today with persons seeking smallpox vaccinations, as Health Director J. C. Geiger estimated that some 150,000 San Franciscans have been inoculated this week.

All naval personnel stationed in San Francisco, and within a 50-mile radius was ordered vaccinated. The order applied to naval personnel entering or leaving San Francisco, and included a recommendation that their dependents, as well, take the precautionary measure.

The 12th Naval District order explained that the eight local smallpox cases which have precipitated the immunization campaign were an Oriental type of the disease against which ordinary smallpox vaccine, given all naval personnel when they enter the service, is no protection.

New Vaccine Used

For this reason, a new type of vaccine is being used to fight the smallpox, believed introduced from overseas.

Dr. Geiger said the city emergency hospitals and clinics are using the same type vaccine as the Navy—"the latest type, which will protect against most cases."

The five emergency hospitals have each vaccinated some 1,500 persons a day this week, Dr. Geiger estimated.

"We are using every available force to meet the demand for vaccinations—doctors, nurses, stewards," Dr. Geiger declared. "Every medical facility is in use."

"San Francisco is going to be the best protected city against smallpox that the world has ever seen."

Dr. Geiger said he expected the demand for vaccinations to slack up next week, due to the great numbers of people who are now protected. He found the most "startling" aspect of the campaign to be the large numbers of people who had never had any smallpox vaccinations.

Army public relations officers said they had received no word of a vaccination order similar to the Navy's.—*San Francisco News*, March 23.

Navy Hampering Control of Vice in San Francisco, Dullea Charges

Lack of Navy coöperation in vice investigations hampers police control of prostitution, Police Chief Dullea charged yesterday at Fresno at a conference of the State-wide Committee on Law Enforcement.

He elaborated upon this charge on his return to San Francisco.

Street walkers and women operating out of "both dives and swank cocktail lounges" confine solicitation primarily to Navy personnel and avoid civilian and Army men because they fear arrest, the chief said.

Regarding reports that 485 new cases of venereal disease were listed in San Francisco during March, Dullea stated:

"A breakdown will show many of them are Navy personnel, and yet the Navy has done the lousiest job in vice control ever done in this State and has refused to assign Navy personnel to vice investigation as the Army has done."

A statement in reply was issued by the Twelfth Naval District information office, declaring "no official reports have been received on this charge."

"This Naval District has and will continue to coöperate 100 per cent to the extent of its legal authority in all matters affecting communities in which Navy and Marine Corps personnel reside."

Venereal disease is not an offense in the Navy unless infected personnel have failed to report to a prophylaxis station and have concealed the infection.

Dullea asserted the Army furnishes undercover vice investigators and that Army men testify against venereal sources, whereas Navy personnel are not obliged to do so.

He also protested Department of Health policies which, he said, permit an infected woman to be treated as a sick person, not a subject for jail imprisonment.

"We think infected prostitutes should be jailed as offenders and sentenced to serve long enough to assure no spread of infection," he added.

The committee, of which Dullea is chairman, urged a conference with State Health Department officials to seek added coöperation in combating venereal disease, principally on exchange of information on sources of contact.

Continuation of a general wartime suppression of houses of prostitution also was advocated.

Dr. J. C. Geiger, city health director, reported:

"I do not know of a single instance in which the Navy failed to coöperate in curbing venereal disease. They have coöperated in providing sources of infection every time we have asked."

He said he could not agree to imprisonment for venereal disease cases solely on that count, but "prostitution is something else again; that is the job of the police, and punishment is up to the courts."

"There has been every kind of coöperation in trying to curb venereal disease and still the rate goes up. I doubt if any police chief can solve the problem; Moses couldn't," he added.—*San Francisco Chronicle*, April 12.

MEDICAL JURISPRUDENCE†

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Privileged Communications Between Physician and Patient in California

Part III

(Continued from last issue)

Criminal actions proper. The general rule in California is that the physician-patient privileged communication rule is limited to civil actions and cannot be invoked in criminal cases. The statutory basis for this rule is found in Subdivision 4, Section 1881 of the *Code of Civil Procedure*, where it is stated that a "licensed physician or surgeon cannot, without the consent of his patient, be examined in a *civil action* . . ." There is no such statutory provision with respect to *criminal* actions. The basis and purpose of the privilege is to protect a patient from humiliation and annoyance which might follow a dis-

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from the syllabi of recent decisions, and analyses of legal points and procedures of interest to the profession.

closure of his bodily ailments, but not to shield a person charged with crime. Thus, in *People vs. Lane* (1894), 101 Cal. 513, where, after a defendant was charged with murder, the doctor who had treated the defendant was called and examined by the prosecution. It was held that the doctor's testimony was admissible, the Court saying that "the rule as to privileged communications between a physician and patient does not apply in criminal cases. The privilege was not conferred to shield a person charged with the murder of another, or to be used as a weapon against one charged with crime." Again in *People vs. West* (1895) 106 Cal. 89, the California Supreme Court stated that the rule as to privileged communications between patient and physician is limited to civil actions and does not apply in criminal cases. Therefore, both from the standpoint of statutory and case law, it can be concluded that in a criminal action proper, a physician cannot refuse to disclose information which was necessary to enable him to prescribe or act for the person on trial for a crime.

Criminal preliminary hearings, investigations and grand jury inquiries. Whether or not the rule that a physician in a criminal action must disclose all communications between himself and a patient extends to a situation involving a criminal investigation, preliminary hearing or a proceeding before a grand jury inquiring into suspected criminal acts, is unsettled in California. A search reveals no California case in which a question of the applicability of the physician and patient privilege to the enumerated proceedings has been directly passed upon. However, a California Appellate Court decision casting some light on this situation is *People vs. Dutton* (1944) 62 Cal. App. 2nd 862, wherein it was held that the statutory rule prohibiting a physician from disclosing communications made to him by his patient did not extend to a psychiatrist employed as a member of the police forces to interview persons arrested on sex charges. The California Court stated "the claim of privilege as between physician and patient is limited to civil cases and is not cognizable in a criminal proceeding." The use of the words "criminal proceeding" by the California Court in the Dutton case should not by any means be interpreted as holding that a criminal investigation, preliminary hearing or a grand jury inquiry are all "criminal proceedings" and therefore within the rule that a physician may disclose confidential communications in a criminal action. It is suggested that the California Appellate Court in using the words "criminal proceeding" had in mind only a criminal action, or criminal trial proper and did not intend to extend its decision to encompass criminal preliminary hearings, investigations or grand jury inquiries. Clearly a decision going to that extent might possibly expose the physician to liability for disclosing confidential communications. For not all of the above mentioned proceedings always ultimately result in a criminal action proper and therefore if the physician gave evidence in a criminal preliminary hearing, investigation or grand jury inquiry and no criminal charges were actually instituted against a defendant, the physician conceivably could be held liable by a patient for an unauthorized disclosure of privileged communications. Of course, if the physician could obtain a written consent to divulge the communications from the patient, this would provide adequate protection from any future actions by the patient. It would appear that the only safe practice for a physician is to refuse to give evidence concerning confidential communications between himself and his patient except in a criminal action proper unless the patient gives his written consent.

Conclusion. In conclusion and to summarize, it can be stated that in California a physician cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient

which was necessary to enable him to prescribe or act for the patient unless the facts of his situation actually bring him within one of the following six classifications: (1) Where a patient sues for damages for personal injuries, any physician who "prescribed for or treated" him may testify; (2) Where a patient is dead, and the executor or administrator, surviving spouse or children sues for wrongful death, the physician may testify; (3) Where the patient is dead and his will is contested; (4) Where the patient is dead and an action is brought involving the validity of any instrument transferring real or personal property claimed to have been executed by him in which case the physician may testify as to mental condition and disclose any such information and; (5) Where, under the Workmen's Compensation Act, the physician makes or is present at any examination of the injured employee; (6) Where the physician is called to testify in a criminal trial proper.

To conclude this article, it may be noted in passing that the law of England on the subject of physician and patient privileged communications consistently through hundreds of years, in direct contrast to the laws of California, has been that "medical men are bound to reveal confidential communications made to them in their professional character as such." *Rex vs. Gibbons* (1872) 1 Car. and P. 97.

(The End.)

National Mental Health Bill

A measure has been introduced into the Senate and House of Representatives at Washington which provides, within the framework of the United States Public Health Service, a national psychiatric institute for research into the prevention, cause, diagnosis and treatment of psychiatric disorders; for the training of qualified personnel throughout the country; and for financial assistance to states, counties and localities which will enable them to initiate adequate preventive mental health facilities.

State health authorities are to present plans for approval of the Surgeon General and to administer state mental health programs in all states where no designated state mental health authority exists.

The problem of the returning veteran suddenly has thrown into bold relief the inadequacy of the nation's mental health facilities. This inadequacy is not the result of the warborne increase in psychiatric disorders alone. For years the campaign for mental health has struggled against immense odds—the geographical isolation of mental hospitals, the slow conversion of asylums into hospitals maintaining advanced modern medicine, the social stigma attached to mental deficiencies or even to minor emotional disturbances, the unwillingness of people to accept mental health as a concomitant of physical health, laws affecting the mentally ill based on criminal procedure, the indifference of medical schools to training psychiatrists, and the poor financial support limiting research and the training of personnel.

Mental health authorities see as the solution to this problem an over-all national mental health program, sponsored by the Federal Government but calling on the best private abilities in the country and abroad.

Such a program is aimed at in Senate bill 1160 the House of Representatives bill 4512. In the House, the bill has been reported favorably by the committee to which it was referred. Hearings will soon be held by a committee of the Senate.